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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

G.G. et al., Petitioners, v. THE SUPERIOR COURT OF CONTRA COSTA COUNTY, Respondent; CONTRA COSTA COUNTY CHILDREN & FAMILY SERVICES BUREAU et al., Real Parties in Interest.	A147153 (Contra Costa County Super. Ct. No. J15-00167)

G.G. and T.M. seek writ review of an order that terminated reunification services and set a hearing under Welfare and Institutions Code section 366.26.[1] They contend the juvenile court erred in finding that real party in interest, Contra Costa County Children & Family Services Bureau (Bureau), provided or offered them reasonable services. In addition, G.G. contends the court erred in finding he failed to participate regularly in court-ordered treatment. T.M. further argues that the court should have extended reunification services because she made substantive progress in her case plan, and that her visitation should not have been reduced. We will deny their petitions.

[1] All statutory references are to the Welfare and Institutions Code.

I. FACTS AND PROCEDURAL HISTORY

T.M. (mother) and G.G. (father) are the parents of P.G. (child), who was just over a year old when the original juvenile dependency petition was filed in February 2015.[2]

A. Bureau's Dependency Petition

The Bureau alleged that the child came within the jurisdiction of the juvenile court under section 300, subdivision (b), on the ground that the child was at substantial risk due to mother's untreated mental health issues, her regular use of marijuana, and an incident in which mother and father had engaged in domestic violence with the maternal aunt and grandmother. The child was detained.

B. Jurisdictional Hearing and Order

In April 2015, after the Bureau had filed an amended petition and the court had held a contested jurisdictional hearing, the court sustained allegations that mother had placed the child at substantial risk by failing to address her mental health issues and using marijuana, and both mother and father had placed the child at risk when they engaged in domestic violence with the maternal aunt and maternal grandmother while the child was in the home.

C. Disposition Report and Order

In its disposition report, the Bureau expressed concern that mother and father kept the child in a household with ongoing physical and verbal conflict, mother had untreated mental health issues including bipolar disorder, and mother and father used drugs in the child's presence. The social worker provided father with referrals for anger management in March, April, and May 2015, gave both mother and father referrals for parent education in March and April, and referred them both to outpatient substance abuse treatment in April. Mother did not follow through with a mental health evaluation,

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[2] On the date this petition was filed in superior court case No. J15-00167, the Bureau filed a dependency petition pertaining to another child of mother, N.H., in case No. J15-00166. The six-month review hearing pertained to both children. Although mother filed a notice of her intent to seek a writ petition with regard to N.H., the petition pertains only to P.G.

parenting class, or a domestic violence group, because she moved from Contra Costa County to Santa Clara County. Mother and father later relocated to San Bernardino County; the Bureau provided referrals there, but mother claimed she could not pursue them because her Medi-Cal benefits were still in Contra Costa County. The Bureau recommended that the children remain out of the home of mother and father and that reunification services be offered.

On June 15, 2015, after a contested disposition hearing, the court adopted the Bureau's recommendations.

Mother's case plan required her to maintain a stable and safe residence for herself and her children; stay free from illegal drugs and comply with drug tests; engage in individual counseling, a domestic violence program, a substance abuse program, and a parenting class; complete a mental health assessment and follow recommended treatment; and participate in substance abuse testing.

Father's case plan was similar. It required that he stay free from illegal drugs and comply with drug tests; engage in individual counseling, a domestic violence program, and a parenting class; complete a substance abuse assessment; and, as modified by the court, participate in substance abuse testing and, in the event of a positive test result, substance abuse treatment.

D. Bureau's Report for Six Month Review

The Bureau reported that, despite its referrals for services, mother and father had not complied with various aspects of their case plans.

Mother and father had not established stable housing for at least six months; in fact, mother was living in her car. Mother had completed a parenting class, but she was "exited" from her outpatient substance abuse treatment facility in approximately September 2015 due to poor attendance and inconsistent communication, and she did not enroll in another program. Although provided with low-cost therapeutic services in August 2015, she had not looked into those resources until shortly before the six-month review. Drug testing was set up for every county in which mother had lived during the period; she had only taken two tests, and both times tested positive for marijuana.

Father had started individual therapy. He completed a parenting program and drug-tested twice, with negative results. In June 2015, father attempted to start his 52-week domestic violence program, but he did not complete his intake with the program or begin his first session until October 2015, and he failed to attend the next session.

The Bureau advised: "As the parents have been inconsistent with the requirements and services they have engaged in, it would be detrimental to return the children to their care." Father "has not followed through with Court ordered services to address serious issues such as domestic violence that place his family at risk." Although mother was "growing" and making strides in her family relationships, she tested positive for drugs, only recently began to address her mental health issues, and had not fully participated in domestic violence treatment. The Bureau concluded: "Considering the young age of [the child and her sister] and the parents' inability to address the serious domestic violence in the family as well as substance abuse issues and the mother's mental health, it is respectfully recommended that services be terminated." The Bureau requested that a section 366.26 hearing be set.

E. Juvenile Court's Order

At the six-month review hearing on December 16, 2015, the evidence included the social worker's testimony concerning the services offered or provided to mother and father and their continued failure to meet the objectives of their case plans.

The juvenile court thereafter found, among other things, that the Bureau had provided or offered reasonable services that were designed to help the parents overcome the problems precipitating the removal of the child; the parents failed to participate regularly in their court-ordered treatment plans; and there was no substantial probability the child would be returned to the physical custody of the parents if services were extended. The court terminated reunification services as to mother and father and set a section 366.26 hearing for April 13, 2016. The court also reduced the number of visits for the parents.

Mother and father each filed notices of their intent to seek writ relief and thereafter filed writ petitions. Based on the allegations of the petitions, we issued an order to show cause; the Bureau, as real party in interest, filed an opposition to the petitions.

II. DISCUSSION

A. The Petitions Do Not Comply With The Rules of Court

Rule 8.452(b) of the California Rules of Court requires a petition seeking review of an order setting a section 366.26 hearing to include a memorandum that "must provide a summary of the significant facts" and should "note any disputed aspects of the record." Mother's and father's petitions do not provide an adequate summary of the significant facts or the evidence supporting the court's decision, setting forth instead the evidence they apparently think is favorable to their cause. Their petitions are therefore inadequate and in violation of rule 8.452(b). This in itself justifies denial of the petition.

Considering the evidence that *is* in the record, we conclude that the petitions are meritless.

B. Termination of Services and Setting Section 366.26 Hearing

Two decisions must be made at the six-month review hearing: (1) should the child be returned to parental custody; and (2) should services be continued, or should services be terminated and a permanency hearing be set under section 366.26. (See § 366.21, subd. (e).) Here, mother and father do not challenge the first issue, so we turn to the second.

The maximum period of reunification services is usually six months where, as here, the child was under the age of three at the time of removal. (§ 361.5, subd. (a)(1)(B); see *Sara M. v. Superior Court* (2005) 36 Cal.4th 998, 1009, fn. 4.) Services may be extended if the court finds there is a substantial probability that the child will be returned to the parent's custody within the extended period. (§ 361.5, subd. (a)(3).)

Whether a section 366.26 hearing should be set is governed by section 366.21, subdivision (e). Where the child was under the age of three at removal, the court may schedule a section 366.26 hearing if it finds by clear and convincing evidence that the

parent failed to participate regularly and make substantive progress in a court-ordered treatment plan. (§ 366.21(e)(3); Cal. Rules of Court, rule 5.710(c)(1)(D).) However, if the court finds there is a substantial probability that the child may be returned to his or her parent within six months, the court shall continue the case to the 12-month permanency hearing (§ 366.21(e)(3); rule 5.710(c)(1)(D)), with services (§ 361.5, subd. (a)). The court shall also continue the case to the 12-month hearing if the court finds that reasonable services have not been provided. (§ 366.21, subd. (e)(3).)

Thus, for reunification services to be terminated and a section 366.26 hearing to be set at the six-month review hearing, the agency must prove (1) that it offered or provided reasonable reunification services; and (2) by clear and convincing evidence, that the parent has "failed to participate regularly and make substantive progress in a court-ordered treatment plan." (§ 366.21, subd. (e)(3).) If the agency meets this burden (the latter prong can be met by showing *either* a failure to participate *or* a failure to make progress), the burden shifts to the parent to show a substantial probability that the child will be returned by the 12-month permanency hearing.

1. Mother and Father Were Offered Reasonable Services

We review the court's finding of reasonable services for substantial evidence. (*In re Christina L.* (1992) 3 Cal.App.4th 404, 413–414.)

a. Substantial Evidence

Substantial evidence supported the court's finding. Even before the disposition order in June 2015, the Bureau offered to assist both mother and father in finding services in Santa Clara County, where they were then living. The social worker provided a referral for father for anger management and referrals for both of them for parent education and outpatient substance abuse from March to May, 2015. When mother and father relocated to San Bernardino County, the Bureau provided referrals there as well. The Bureau also provided $40 per week in transportation assistance while they were in San Bernardino County and, except for about three weeks due to a change in the location of the visits with the child, $20 per week plus free BART and bus tickets when they were in the Bay Area.

With respect to housing, the social worker sent an email to mother in July 2015 discussing housing strategies, explaining how to call "211" to see if there were any shelters, and providing information regarding a low-cost motel in Alameda County. A social case work assistant also mentioned Shelter Inc., as a source of a more permanent housing situation. The social worker provided information on the housing authorities in Alameda County and Contra Costa County in October 2015, advised of an organization that could assist with a housing deposit in November 2015, and after looking on "Craigslist" suggested they try searching for housing in Stockton, which had more reasonable housing rates.

The Bureau provided father referrals for domestic violence and parenting classes, even as he and mother moved from county to county. Father was referred to ASANTE Family Agency in San Bernardino for a domestic violence class; in August 2015, after he returned to Northern California, the social worker provided a referral to STAND! in Concord. The Bureau also authorized financial assistance for father for domestic violence and parenting classes, and provided him with referrals to no-cost or low-cost therapeutic services in Contra Costa County and Alameda County.

The Bureau provided mother referrals to three substance abuse treatment centers in San Bernardino County. After she complained that she was uncomfortable with the inpatient setting, the Bureau referred her two more times to two different programs in San Bernardino County, but she did not attend them. In August 2015, the Bureau provided mother a list of low-cost therapeutic services in Contra Costa County and Alameda County. And the Bureau arranged for drug testing in every county mother and father resided, including San Bernardino, Alameda, and Contra Costa.

b. Mother's and Father's Argument

Mother and father essentially argue that that the Bureau did not provide adequate housing assistance, which made it difficult for them to satisfy their case plan objectives. Mother notes only that the Bureau emailed father information on an organization that would help pay for a housing deposit on November 15, 2015, and emailed father

information on housing authorities for Contra Costa County and Alameda County on October 26, 2015. Father similarly complains that the Bureau did not offer housing referrals until October 26, 2015. Their arguments are unavailing. (Father also argues that the Bureau failed to pay counseling costs, which we address *post*.)

In the first place, as set forth above, there was substantial evidence to support the conclusion that the Bureau offered reasonable housing services under the circumstances, and mother and father do not specify what more the Bureau should have done.

In any event, any shortcomings in housing services did not affect mother's and father's failure to comply with the rest of their case plans. As set forth below, neither mother nor father had started to drug test until October 26, 2015—about three weeks before the six-month review. Neither one consistently engaged in a domestic violence program. Neither one attended counseling regularly, and mother had not engaged in substance abuse treatment. Although the Bureau advised the court that mother and father had not secured stable housing for a six-month period, a lack of housing was not the only basis for terminating reunification services.

Furthermore, neither mother nor father point to any evidence that their failure to meet the case plan objectives had anything to do with their lack of housing or insufficient housing services. There was no evidence that mother's housing situation caused her to fail her initial drug testing, prevented her from starting her testing earlier than October 26, 2015, or caused her to miss tests; nor was there evidence that mother's housing situation prevented her from starting her domestic violence program until October 28, 2015. There was no evidence that any delay in housing referrals was the cause of father's failure to start individual counseling until October 23, 2015, his failure to start drug testing until October 26, 2015, his failure to start his domestic violence program until October 26, 2015, or his failure to complete the program.

Mother and father fail to establish error.

2. Failure to Engage In and Make Progress In The Case Plans

Mother claims she made substantive progress in her case plan because she saw a psychiatrist and took medication, there were apparently no mental health issues during

the reporting period, she eventually drug-tested regularly and the tests were negative, and she attended five out of 52 domestic violence sessions, which she claims is significant given the timing of the referrals and the fact she missed two sessions because she was visiting the child. In addition, the Bureau acknowledged that mother was growing and making strides in her family relationships.

But mother ignores the substantial evidence supporting the conclusion that she did not engage in services and failed to make substantive progress in her court-ordered treatment. As mentioned, she did not start drug testing until October 26, 2015, and she failed her first two tests. Although she enrolled in an outpatient substance abuse facility, by August 2015 she was warned about her noncompliance with the program, and around September 2015 she was ousted from the facility for failing to attend regularly and communicate consistently with staff. Although mother blamed this on transportation issues, the Bureau had offered her bus and BART tickets and advised that STAND! would pick her up from anywhere in the Concord area. Despite being referred to an individual counseling program that would accept Medi-Cal, there was no evidence she ever engaged in counseling. And she did not even start her 52-week domestic violence program until October 28, 2015.

Father asserts there was insufficient evidence that he failed to participate regularly in court-ordered treatment. He argues that he completed drug testing and a parenting class, and he blames his failure to complete a domestic violence program and individual counseling on the Bureau's failure to pay for them. However, father does not provide any authority for the proposition that the Bureau was required to pay for the domestic violence program or the individual counseling under the circumstances.

Moreover, father ignores the evidence that provides ample support for the court's finding. He did not start private therapy until October 23, 2015. Although the Bureau *agreed to reimburse him* for the sessions that cost $100 each, father did not *show up* for the remaining appointments, and the therapist terminated him because he was rude when discussing the sessions he missed. Father did not complete even the *intake* for his 52-week domestic violence program, or attend the first session, until October 26, 2015, the

same day he *started* his drug testing. He then failed to attend a number of ensuing sessions and was terminated from the program due to his lack of attendance.

Mother and father fail to establish error.

C. Reduction in Visitation

Mother claims the juvenile court erred by reducing her visitation from once weekly to twice monthly. She maintains she had visited the child regularly and there was no evidence that her visits were "in any way problematic."

The juvenile court has broad discretion in fashioning visitation orders, and the court's determination will not be disturbed on review absent a clear abuse of discretion. (*In re Robert L.* (1993) 21 Cal.App.4th 1057, 1067.)

Mother fails to establish an abuse of discretion. In the first place, the court terminated reunification services because mother had not participated regularly in her case plan. Since services were terminated and a section 366.26 hearing was being set–moving from reunification toward a permanency option that did not include mother as a caretaker–it was not irrational or arbitrary for the court to reduce the monthly minimum visitation order. Furthermore, contrary to mother's representation, there *was* evidence that the visits were problematic and she did not visit regularly. Although visitation with mother generally went well, at times she was demanding of the children, became frustrated and too aggressive with them, and had unrealistic expectations of how they should behave. There was also evidence that she was not always consistent with her visits.

III. DISPOSITION

The petitions of G.G. and T.M. seeking extraordinary relief from the juvenile court's order terminating reunification services and setting a section 366.26 hearing are denied on the merits. Petitioners' requests for a stay of the hearing are denied. This decision is final immediately. (Cal. Rules of Court, rules 8.452(i), 8.490(b)(2)(A).).

NEEDHAM, J.

We concur.

JONES, P.J.

BRUINIERS, J.